

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

Commonwealth Edison Company	)	
	)	
Petition for Approval of the Energy	)	Docket No. 07-0540
Efficiency and Demand-Response Plan	)	
Pursuant to Section 12-103(f) of the Public Utilities Act	)	

**BRIEF ON EXCEPTIONS OF THE ILLINOIS**

**DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY**

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**I. INTRODUCTION AND SUMMARY**

The Illinois Department of Commerce and Economic Opportunity (“the Department”), by and through its Attorneys submit this Brief on Exceptions in accordance with Section 200.830 of the Rules of Practice of the Illinois Commerce Commission (“Commission” or “ICC”), 83 Ill. Admin. Code §200.830 and the schedule established by the Proposed Order issued on January 25, 2008.

P.A. 95-0481, which established Section 12-103 of the Illinois Public Utilities Act (the Energy Efficiency Portfolio Standard) and led to the commencement of these proceedings, requires a unique approach that must be reflected in the Commission’s Orders in Dockets 07-0539 and 07-0540. Implementation of the Energy Efficiency Portfolio mandate will take a coordinated effort between all parties to dockets 07-0539 and 07-0540 to ensure that the goals of the statute are met.

The Department respectfully requests that the Commission consider and accept the Department’s exceptions that address this need for consistency.

## **II. EXCEPTIONS**

### **A. Future DCEO Submissions.**

The Department is a discreet entity in these proceedings and must have the ability to manage and implement its portion of the portfolio in a manner that will ensure its ability to contribute to the overall savings goals. The potential exists, evidenced by the differences between the proposed orders in Dockets 07-0539 and 07-0540, that if the Department files its plan in separate dockets, that it may be required to treat its programs and plan differently in two areas of the state simply because two separate proceedings may result in two inconsistent orders.

The Department is amenable to making joint filings with the corresponding utilities; however the Order in this Docket should address this need for a flexible but consistent approach if the Department is to avoid being hamstrung by administrative burdens. Accordingly, the Department respectfully requests that page 26 of the Proposed Order be revised as follows:

### **Analysis and Conclusions**

Staff's contention is reasonable and it is hereby approved. We do note, however, that the new statute created almost impossible time-frames, creating little time for in-depth analysis of the finer points of civil procedure. However, DCEO has statutory obligations pursuant to the new statute, which logically, makes it a joint petitioner. DCEO is directed, in the future, to make joint filings with the corresponding utilities, with an understanding that, DCEO's flexibility to administer and offer a consistent set of efficiency programs statewide should not be compromised by this approach.

### **B. The Stakeholder Advisory Committee.**

The Department agrees that the Advisory Group made up of all interested parties to this docket is essential to the success of this endeavor. Implementation of the Portfolio and plans must remain flexible so that the utilities and DCEO are able to adapt their programs to meet market conditions and that all three petitioners should coordinate their efforts as much as possible to avoid confusion and discrimination. In order to ensure the

sustainability and long-term effectiveness of the Efficiency Portfolio, the Commission must ensure that a consistent approach, to the extent possible, be taken with respect to the requirements and procedures that will be implemented in the Commonwealth Edison and Ameren territories.

The proposed order requires the Commission Staff to begin holding workshops in order “to develop standards regarding the accounting of the funds collected, the appropriate measure savings values, net to gross ratios, financial compliance, program information tracking and reporting, and related issues.” (Proposed Order at 33) In order to avoid duplicative efforts and potentially inconsistent results, any actions or deliberations of a stakeholder advisory group process must be coordinated with this Staff run workshop process.

Accordingly, the Department respectfully requests that page 33 of the Proposed Order be revised as follows:

How often the advisory committee meets and other procedural vehicles such as notice and comment for committee reviews of key issues should be determined by the Ameren and members of the committee. The advisory committee need not report to the Commission, however, the advisory committee should coordinate its efforts with the Staff led Workshops required by this Order. (Proposed Order at 33)

### **C. Banking of kWh Savings.**

In its Proposed Order in Docket 07-0539, the Commission declined to rule that Ameren should be allowed to “bank” any excess energy savings, noting that “Ameren . . . presented no evidence on this issue at trial.” (Proposed Order in Docket 07-0539, at 28) The Department requests in that Docket that the Commission reconsider this finding and allow all three petitioners (ComEd, Ameren, and DCEO) to “bank” excess energy savings. Because the Department is in the unique situation of being statutorily required to design and administer its portfolio of energy efficiency measures in conjunction with the utilities, any finding as to whether a utility is allowed to “bank” excess energy savings necessarily determines whether or not the Department is likewise allowed to “bank” such savings. The Department notes that the Commission’s Proposed Order in the ComEd

docket does grant ComEd the ability to “bank” up to 10 percent of the energy savings required by the statute in any given year. (Proposed Order at 40) The practical result of ComEd -- but not Ameren -- being allowed to “bank” savings is that the Department will be governed by different procedural standards depending on whether its measures are being implemented in either the ComEd or Ameren territories. This is precisely the scenario that the Department expressed concern about through Mr. Feipel’s rebuttal testimony. (See DCEO Ex. 2.0 at 13-14) The Department submits that allowing one utility to bank savings while not permitting the other to do likewise would produce an unfeasible scenario for the Department.

#### **D. Hiring and Firing the Evaluator.**

Given the critical nature of the measurement and evaluation of the petitioners’ programs to the success of the Portfolio, it is important to ensure that the evaluation process is open, inclusive and transparent. For the evaluation to be an open and independent process, the key parties that developed this initiative must be included. The Department agrees with the Staff that the utility should not be given sole responsibility to hire and fire the evaluator. The best way to ensure an “independent” evaluation and to avoid unnecessary conflict is to have multi-party oversight of the evaluation contract.

Section 12-103(f)(7) does not preclude this approach to oversight of the evaluation. The statute does not state that the Commission need take on this task alone. To the contrary, the plain language of the legislation reads “The utility shall...” “(7) Provide for an annual independent evaluation...” (220 ILCS 5/12 -103(f)). In other Sections of the Illinois Public Utilities Act, the plain language vests the Commission with sole responsibility. For example, Section 8-102 clearly establishes this relationship:

*“Any audit or investigation authorized pursuant to this Section may be conducted by the Commission, or if the Commission is unable to adequately perform the audit or investigation, the Commission may arrange for it to be conducted by persons independent of the utility and selected by the Commission. The cost of an*

*independent audit shall be borne initially by the utility, but shall be recovered as an expense through normal ratemaking procedures.” (220 ILCS 5/8-102).*

If the General Assembly intended for solely the Commission to hire, and the utilities simply to fund the efficiency evaluator, then Section 12-103(f)(7) would read like this Section of the Act. Consequently, selection and management of the contract can and should be conducted as part of a multi-party effort.

Nonetheless, the Department agrees that it is appropriate for the Commissioners to maintain the ability to hire and fire the evaluator. The Commission as the ultimate judicial body in this regard should not and cannot relinquish this authority.

Accordingly, the Department respectfully requests that page 45 of the Proposed Order be revised as follows:

### **Analysis and Conclusions**

The pertinent portion of the statute provides that

(utilities) shall . . . [p]rovide for an annual independent evaluation of the performance of the cost-effectiveness of the utility’s portfolio of measures and the Department’s portfolio of measures . . .

(220 ILCS 5/12-103(f)(7)). We agree with Staff that there is no logical way to interpret Section 12-103(f)(7) of the statute other than to conclude that an evaluator who reports to the Commission is one, over which, this Commission has the ability to hire and fire. Any other conclusion would render the statutory language cited above to be meaningless. The Commission Staff shall consult with ComEd, Ameren, the Department of Commerce and Economic Opportunity, the Office of the Attorney General, the Citizens Utility Board, and the Environmental Law and Policy Center in developing the evaluation RFP, selecting the independent evaluator and overseeing the evaluation.

### **III. CONCLUSION**

For the foregoing reasons, the Illinois Department of Commerce and Economic Opportunity respectfully requests that the Commission revise the Proposed Order as set forth herein.

Respectfully Submitted,

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